

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 57th LEGISLATURE - REGULAR SESSION COMMITTEE ON HUMAN SERVICES**

**Call to Order:** By **CHAIRMAN BILL THOMAS**, on January 31, 2001 at 3:00 P.M., in Room 172 Capitol.

#### **ROLL CALL**

**Members Present:**

Rep. Bill Thomas, Chairman (R)  
Rep. Roy Brown, Vice Chairman (R)  
Rep. Trudi Schmidt, Vice Chairman (D)  
Rep. Tom Dell (D)  
Rep. John Esp (R)  
Rep. Tom Facey (D)  
Rep. Daniel Fuchs (R)  
Rep. Dennis Himmelberger (R)  
Rep. Larry Jent (D)  
Rep. Michelle Lee (D)  
Rep. Brad Newman (D)  
Rep. Mark Noennig (R)  
Rep. Holly Raser (D)  
Rep. Diane Rice (R)  
Rep. Rick Ripley (R)  
Rep. Clarice Schrumpf (R)  
Rep. Jim Shockley (R)  
Rep. James Whitaker (R)

**Members Excused:** None.

**Members Absent:** None.

**Staff Present:** David Niss, Legislative Branch  
Pati O'Reilly, Committee Secretary

**Please Note:** These are summary minutes. Testimony and discussion are paraphrased and condensed.

**Committee Business Summary:**

Hearing(s) & Date(s) Posted: HB 352, HJ 9, 1/28/2001  
Executive Action: HB 222

HEARING ON HB 352

Sponsor: REP. TIM CALLAHAN, HD 43, Great Falls

Proponents: None

Opponents: None

Opening Statement by Sponsor:

REP. TIM CALLAHAN, HD 43, Great Falls, said that the bill adds language to Section 40-4-204 and 40-6-116 to indicate that child support is subject to the standard interest rate of 10 percent, standard judgment on debt. There is a misspelling on page 2, line 15, and again on page 6, line 25, where it says "owning" and should say "owing." {Tape : 1; Side : A; Approx. Time Counter : .9 - 2.3}

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

Rep. Lee asked if the interest would be assigned when the person is on public assistance. Amy Pfeifer, attorney for the Child Support Enforcement Division, said she had not given thought to this because they don't currently collect interest. It may be, because it goes with the principal, so her guess is that it's probably assigned and she could look into it to see what other states are doing. Even in that case, if the interest was assigned along with the principal, you'd still have the concept that it's only assigned to the extent that it's unreimbursed public assistance to be reimbursed. It would never be assigned in excess of what the state had paid out to the family on public assistance, so there would be that limitation.

Rep. Dell asked Ms. Pfeifer about a phone conversation they had had several months previously, which he thought addressed something similar to this, regarding a woman whose ex was not paying child support and the woman thought she should be entitled to interest.

Rep. Dell thought Ms. Pfeifer had said there would be some problems with being able to get interest, and he wondered if the bill addresses that. Ms. Pfeifer said that interest is collectable on child support. When she had previously talked with Rep. Dell about interest being owed, she probably had said if they get a judgment in court and get a judgment for the interest, then her agency can collect it. This bill clarifies and puts in statute that interest

can be collected on a delinquent child support order. The court, or the appropriate tribunal, would still have to determine that someone is delinquent in child support, what the amount of the delinquency is, and then determine what would be the rate of interest, generally 10 percent unless specified otherwise, and how much interest is owed, based on how far behind the debt is.

**Rep. Noennig** asked for clarification that child support orders referred to on page 5 are judgments of the court, and **Ms. Pfeifer** said they are. **Rep. Noennig** asked if the orders addressed on page 1 are also judgments of the court. **Ms. Pfeifer** said that both sections of the bill are similar. Section 1 refers to the divorce part of the code, 40-4-204, that sets out what has to be in the child support order, and that's where it would say subject to interest. Section 2 of the bill is the uniform parentage act part of the code, the determining part of the code for people who had not been married and may be pursuing a paternity judgment and then child support in that action. The sections are quite parallel. **Rep. Noennig** said his point is that in either instance, as a judgment or decree of a court, under current law, Section 25-9-205 says that interest is payable, so he doesn't understand why this bill is needed. **Ms. Pfeifer** said this is not a department bill; she was attending the hearing to observe. She agrees that the current statute states that interest is payable on judgments at the rate of 10 percent. There is some case law in family law cases that clarifies that the judgment interest is attributable to that judgment at the judgment interest rate unless the order specifically set a different interest rate. She thinks that the idea behind the bill was that it makes it more clear because you wouldn't have to refer to case law, and you don't have the question about whether a child support order is a regular judgment and at what point does it become delinquent.

**Rep. Noennig** redirected his question to the sponsor, asking if he is aware of any instances where someone has taken the position that the code doesn't already allow a 10 percent interest on a child support judgment. **Rep. Callahan** said he wasn't personally aware of any. The issue was brought to him because there was some confusion about whether or not it was a judgment and they thought the statute ought to be clarified. No attorney or anyone else had told him about any specific cases where somebody said they couldn't get interest.

**Rep. Lee** said that once you have a child support order established, it's not always a guarantee that the interest is with the child support order. In some cases, you have to pursue the interest civilly, starting in your local court. **Rep. Lee** asked if the bill would apply to interstate orders. **Ms. Pfeifer** said this bill would apply to orders issued in Montana under these sections, so Montana's judgment interest rate of 10 percent would apply to an

order issued under Section 1 or Section 2. Other states have similar judgment interest rates. She does not know if every state has a law providing that child support orders carry interest, and some states do have different rates of interest. **Rep. Lee** asked if someone moved to Montana from another state and had a child support order with interest attached to it, would Montana's CSED be able to collect that, and will this bill apply to such interstate orders. **Ms. Pfeifer** said the language of the bill doesn't apply to orders of other states, but if another state's order had a judgment that stated interest was attributable at a specific rate, Montana would enforce that order.

**Rep. Schmidt** asked who gets the interest. **Ms. Pfeifer** said that depends on who it is owed to. In a non-public assistance case, it would be owed directly to the family, and if CSED were collecting, the interest would be passed on to the family. If it was a public assistance case, she believes the state would get it to the extent that there were still public assistance payments to be reimbursed. The state would have to determine what period of debt the interest was attributable to, and then look at whether or not the family was on public assistance during that period to determine whether that particular payment to be credited to interest was owed to the family or to the state. *{Tape : 1; Side : A; Approx. Time Counter : 2.7 - 15.7}*

**Closing by Sponsor:**

**Rep. Callahan** said that it may seem that this bill is unnecessary, but for a lot of people who lack access to this part of the code, having it in black and white for them to see is beneficial to them, and he urged passage of the bill. *{Tape : 1; Side : A; Approx. Time Counter : 15.9 - 16.3}*

**HEARING ON HJ 9**

**Sponsor:** REP. MONICA LINDEEN, HD 7, Huntley

**Proponents:** Bill Martin, Fishtail, Legacy Legislature  
Tom Ebzery, St. Vincent Healthcare  
John Flink, MHA  
Jani McCall, Deaconess Billings Clinic

**Opponents:** None

**Opening Statement by Sponsor:**

**REP. MONICA LUNDEEN, HD 7, Huntley,** said that HJR 9 is an issue that was brought to her by a friend who had served in the 2000

Legacy Legislature. Medicare was enacted in 1965 as a uniform, non-discriminatory, nationwide program based on a 1.45 payroll tax. Since 1984, Medicare beneficiaries have been able to join health maintenance organizations, and in 1997 Congress created Medicare + Choice that consisted of private risk-based plans, mostly managed care organizations. These different programs use a different reimbursement formula than the other two Medicare plans, and it varies substantially depending on the county and the state in which a beneficiary resides. This resolution requests Congress to bring equal funding of health care services and benefits to all Medicare recipients, regardless of where they live, to allow citizens in rural states the same health benefits. There is an equity problem, in particular for senior citizens in Montana, and she'd like to urge the federal government to change that inequity.

**EXHIBIT (huh25a01) EXHIBIT (huh25a02) {Tape : 1; Side : A; Approx. Time Counter : 16.6 - 20.8}**

**Proponents' Testimony:**

**Bill Martin, Fishtail**, said he had served in the Legacy Legislature from Stillwater County and had carried this resolution. His parents had lived in another state where they had enrolled in a Medicare supplemental insurance program that had no premiums, no co-payment and had good coverage that included eyes and prescription drugs. When they returned to Montana, they could find no similar program.

**Tom Ebzery, St. Vincent Healthcare**, said that at one time St. Vincent's had the Gold Choice program through the Yellowstone Community Health Plan. They were proud of it, it was unique, and they were the smallest area in the country to be considered for this program. They got up to nearly 2,400 enrollees. They tried to get increased payments, even meeting with HCFA, the Health Care Financing Administration, and getting the support of Montana's Congressional delegation, but they didn't get additional money. The program became a financial drain and not practicable, and it was very difficult to tell the enrollees who had basically taken a chance on managed care that it was going to go away. This program really did the job, and it should be returned to Montana. They hope the resolution will pass and send a message to Congress.

**John Flink, MHA**, said his association represents hospitals, nursing homes and other health care providers in Montana. They have been involved in this issue for a number of years and have been part of a national coalition that has attempted to even the playing field when it comes to payments for Medicare managed-care plans. Medicare + Choice was created in the Balanced Budget Act of 1997 and was designed to both save money for the Medicare program and also to provide senior citizens, Medicare enrollees, with a better insurance plan than what they currently received under the fee-for-

service Medicare program. The fault in the Medicare + Choice program is that in states where health care costs are low, such as Montana, payments under Medicare choice are also low. As St. Vincent's discovered, payments were so low that they couldn't break even offering this insurance product, nor could they offer anywhere near the same level of benefits as similar insurance plans in other parts of the country such as Florida and Arizona, where it costs more to provide health care services. MHA urges the approval of this resolution and welcomes the involvement of the legislature in this very important issue. As a result of the inequities in the payment formula, there are currently no Medicare HMO's in the state. **{Tape : 1; Side : A; Approx. Time Counter : 21 - 30.5}**

**Jani McCall, Deaconess Billings Clinic**, said they are in support of HJR 9. They think it is critical to make some changes. The courts have agreed that Congress is the group that needs to make this change. Senior citizens are a unique population. The vast majority have limited resources. Some of the marketing strategies for managed care say to do more for less. In this case, the consumer is getting less for more. **{Tape : 1; Side : B; Approx. Time Counter : 0 - 0.8}**

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

**Rep. Noennig** asked **Tom Ebzery** if it is really appropriate for this resolution to request equal funding for all recipients, considering that there probably is a cost difference, or should it say equitable or some different word. **Mr. Ebzery** said he did not draft the resolution, but he thought the intent was that you would get the same amount. There are different costs in different areas, and maybe another word might be better. **Rep. Noennig** asked if there was a copy of a case that had been referred to. **Rep. Lundeen** said she had it and could get copies for the committee. **Mr. Martin** said that he had picked the word "equal" and that was exactly what he meant. The way it is done now, he knows of a county where there are two hospitals and one gets a different rate than the other. He tried to look at their formula and determine how it was figured but couldn't. There may be places where costs are really significantly higher, although he finds that hard to believe. In that case, they could make exceptions. When different hospitals in the same city are given different amounts of money, he didn't think it could be based on the cost of medical treatment.

**Rep. Noennig** asked **Mr. Martin** if he really meant equal funding to all Medicare recipients to allow them to have the same health

benefits, and if he did that is fine; but did he mean to say that if someone in Florida had a procedure that cost \$100 and the same procedure in Montana costs \$25, that the person in Montana should get the \$100. **Mr. Martin** said he didn't think people ought to make money on operations, but at the same time, that money doesn't go directly to the patient anyway. The \$360 a month goes to the insurance company, and they are at risk as to whether or not they'll make money or lose money based on the \$360 a month. They were losing money. If it was based on \$700 a month, they may have made it. He didn't mean equal payment for services rendered, but the equal amount of money per month paid to the insurance company should remain the same. They get that money whether anybody goes to the doctor or hospital or not. He'd like to see everybody get the same amount.

**Rep. Noennig** asked if **Mr. Martin** would have any problem with a change in the language so instead of it being a resolution to Congress to do something, because the legislature can't really resolve that Congress do something, we could encourage them to do something. **Mr. Martin** said he didn't have a problem, although he'd like to make them do something.

**Rep. Esp** asked **Mr. Martin** if he wouldn't rather have folks in all areas of the country get equal services for whatever money they're paying in. **Mr. Martin** said he thought the services were provided by the health care management companies. This money just goes from the federal government to the insurance companies. People pick which HMO to belong to, and they decide if they're happy with the services, and if they aren't, they can choose another one. He thinks it's just how much money they're getting paid, and we're asking insurance companies in Montana to take the risk greater than in the south for less money, and that comes home to the seniors because they pay more money and get less service. **{Tape : 1; Side : B; Approx. Time Counter : 1.2 - 8.7}**

**Closing by Sponsor:**

**Rep. Lindeen** said she wanted to make clear that the benefit is figured by so much per person per month; it is not figured per procedure. This is an important issue, and she urged the committee's support of the resolution. **{Tape : 1; Side : B; Approx. Time Counter : 9.3 - 10.6}**

**EXECUTIVE ACTION ON HB 222**

**Motion:** **REP. LEE** moved that **HB 222 DO PASS.**

**Motion/Vote:** REP. LEE moved that HB 222 BE AMENDED. Motion carried unanimously.

**Discussion:** Rep. Lee explained that the amendment allows an eligible parent to co-pay their way into this particular program, meaning that they would pay, over the life of eligibility, the state's share of the costs associated. That would be on the income scale as provided in 53-4-1009, or 1008. She asked Mr. Niss to determine which section was the better section to use.

Rep. Esp asked Rep. Lee if the amendment would affect the fiscal note, and she said it would, dramatically. Rep. Esp asked her to enlighten them. Rep. Lee said the parent pays the state's share. They buy into the program. The fiscal note is not accurate, which is why she didn't sign it, she doesn't agree with it, and she is working on it.

Rep. Brown asked Rep. Lee if the word "may" in the amendment makes it permissive, and who decides whether or not a parent participates, and how it can affect the fiscal note if it is permissive. Rep. Lee said that some of the requirements are covered under the income guidelines. You would fall into a different category if you were below a certain level of income. It was not designed to be permissive. She wants them to pay their way. Rep. Brown asked if it is not designed to be permissive, why is a permissive word used. Rep. Lee said she apologizes for that and they should ask Susan Fox.

Rep. Facey asked if what they were doing was to allow parents to expand benefits by spending their own money. Rep. Lee said the amendment allows the parent to pay their way into this particular program. We want them to buy into the health insurance program.

Rep. Raser asked if the "may be required" is according to the sliding scale, if the income level was at a certain point, they would not be required to, but as the income level rose, then they would be required to and that's why the "may" is used. Rep. Lee said that is correct, but if the income level is low enough, they'll be in a completely different program that's already in place.

Mr. Niss responded to the sponsor's earlier question about 53-4-1008 or 1009, and he agreed that 1008 was the better section to use, although both sections deal with the adoption of rules and cost sharing requirements. Rep. Lee requested a conceptual amendment to change this section in her proposed amendment, and it was agreed that this would be done. Mr. Niss said this did not have to be done as a separate amendment, since the original amendment



and the conceptual amendment were both proposed by Rep. Lee, and she could offer the amendment to the committee in any form she wished.

**Motion:** REP. LEE moved that HB 222 DO PASS AS AMENDED.

**Discussion:** Rep. Lee distributed information and explained program changes and costs that would occur if the bill passed. She said that regarding cost neutrality, it does not mean you have to cover an adult for the same price as you do a child. It means that it can't cost the federal government any more money than what they have already given. **EXHIBIT** (huh25a03) {Tape : 1; Side : B; Approx. Time Counter : 11 - 28.2}

Committee discussion continued on the current costs of CHIP and proposed costs if expanded.

**Substitute Motion:** REP. RASER made a substitute motion that HB 222 BE POSTPONED UNTIL MONDAY, FEBRUARY 5. This would allow time to gather information and clarify the confusion.

**Discussion:** Rep. Noennig said that the rules say two strange things, one, that the motion to postpone is a nondebatabile motion and they also say that when there is a motion to postpone, it is debatable to a point, that point being not the merits of the bill but whether it should be postponed. He interprets that to mean that there can be some discussion on the issue, not of the merits of the bill, but whether or not it should be postponed. **Chairman Thomas** accepted that interpretation. Rep. Brown said he didn't think the motion to postpone would make much difference. Rep. Lee said she would agree with that.

**Substitute Motion:** REP. RASER made a substitute motion that HB 222 BE POSTPONED UNTIL MONDAY, FEBRUARY 5. Substitute motion failed on a voice vote and show of hands.

**Substitute Motion/Vote:** REP. RIPLEY made a substitute motion that HB 222 BE TABLED. Substitute motion carried 11-7 with Facey, Fuchs, Jent, Lee, Newman, Raser, and Schmidt voting no. {Tape : 2; Side : A; Approx. Time Counter : 0 - 22.2}

#### **EXECUTIVE ACTION ON COMMITTEE BILL**

{Tape : 2; Side : A; Approx. Time Counter : 22.7 - 30.5}

**Chairman Thomas** said that he had been asked to have the committee consider a committee bill. Three-fourths of the committee would

have to agree to do this after they had looked at information on the bill. If they agreed to do a bill, they could then decide if they wanted it introduced. Following that, it would be heard as a regular bill. **EXHIBIT(huh25a04)**

**Rep. Shockley** said this bill, which would amend Section 53-6-111, had been suggested by James Haynes, an attorney in Hamilton. Basically what happens is that the state does an audit of the community mental health centers. It is not done by a CPA, but an auditor designated by the state. We do not know what the auditor's training has been. The auditor merely picks a sampling and then extrapolates from that sampling to determine the error rate in the amount of monies that would normally be paid to the institution. Mr. Haynes believes that a CPA ought to perform the audits, and if they do it incorrectly, the persons who had their money held up ought to be reimbursed and it should draw interest. **Rep. Shockley** thought that some of the language proposed by Mr. Haynes was a bit extreme. If the committee agrees to do a committee bill, Mr. Haynes' suggestions could be used as a concept. That concept would be that DPHHS could only use qualified people such as CPAs to do audits, and if those people messed it up, DPHHS would pay interest on the money they keep.

**Rep. Newman** said that points 1 and 3 on the first page of the exhibit appeared to be inconsistent, and perhaps one or the other should be eliminated. **{Tape : 2; Side : B; Approx. Time Counter : 0 - 11.5}**

**Rep. Lee** said it would be important to find out about the Health Care Financing Authority (HCFA) requirements, because some of the money in question would be federal money because it's medicaid. **Rep. Noennig** said it appeared that the issue is whether DPHHS is extrapolating or projecting an amount that could be owed based on a small sampling of a problem, and then, as a result, holding back money. This apparently happened in one instance, but he didn't know if it is a recurring problem or not. It would help him decide if there ought to be a committee bill if he knew whether it was a big problem or an isolated incident. **Rep. Shockley** said that this type of information could be obtained during a hearing on this bill if the committee decided to go ahead with it.

**Discussion:** **Rep. Brown** expressed concern that this is legislative day 27 and the last day for a committee to request a general bill is day 36, so the time frame is very short. He wondered if the staff could prepare a bill in time. **Mr. Niss** said he is interested in knowing what the department would say about such a bill, so the steps here would involve perhaps inviting Mr. Haynes, talking to the department, and getting rough guidelines from the committee as

to what they wanted included in the bill. The 36<sup>th</sup> legislative day is February 13, so it can be acted on.

**Rep. Lee** called for the question. **Chairman Thomas** reminded the committee that a 3/4 majority vote is required for passage of the motion.

**Motion/Vote:** REP. ESP moved that **THE COMMITTEE CONSIDER THE NEXT STEP, WHICH WOULD BE A HEARING FROM MR. HAYNES.** Motion carried 15-3 with Esp, Fuchs, and Himmelberger voting no.

**ADJOURNMENT**

Adjournment: 6:10 P.M.

REP. BILL THOMAS, Chairman

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PATI O'REILLY, Secretary

BT/PO/JB

Jan Brown transcribed these minutes.

**EXHIBIT (huh25aad)**